

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,)	A05-0108 CR (JWS)
)	
Plaintiff,)	
)	
vs.)	
)	
JOSHUA FLUID, et al.,)	DEFENDANT
)	JOSHUA
)	FLUID'S
Defendants.)	MOTION FOR
_____)	<u>HEARING</u>

No excludable delay is expected to occur as a result of the filing of the present document.

Defendant Joshua Fluid moves the court, pursuant to local rule, to hold an evidentiary hearing, in conjunction with his imposition of sentence hearing set for October 6, 2006 to take evidence and oral argument on the following disputed issues of fact relevant to the calculation of his advisory U.S. Sentencing Guideline Sentence and/or the actual sentence to be imposed. Those issues are:

(a) whether Fluid played a minimal role in the offense under USSG § 3B1.1. Fluid timely objected to the analysis in the draft PSR, at ¶¶ 15 and 57, which denied him a reduction for playing a minor or minimal role in the conspiracy. Upon re-consideration Mr. Fluid withdraws his request for a minor-role adjustment, but maintains his request for a minimal-role adjustment. Fluid's evidence is that he did not join the conspiracy before July, 2005 and that he did not reasonably foresee the shipment of 4,002 grams of powder cocaine from Shannon Rainey to Anchorage

around July 16, 2005. Mr. Pluid denies the allegation that he and co-defendant McKinnon were jointly involved in the conspiracy prior to July, 2005.

(b) whether the drug quantity ascribed or attributed to Pluid is over-stated.

As noted above, Mr. Pluid disputes that he knew or reasonably should have foreseen that Shannon Rainey would ship about four kilograms of powder cocaine to his address on July 16, 2005. Pluid submits that he had only joined the conspiracy just prior to that date, and that Carlos and Shannon Rainey used him, and his address, for a point of receipt, without his knowledge.

(c) whether Pluid's criminal history category level III overstates the seriousness of his criminal history and/or mis-calculates the appropriate level. Mr. Pluid's contention is that his conviction for DWLS under Alaska law overstates his history and that his correct level should be a level II.

(d) whether the description of Pluid's encounters with the ATFE undercover agent concerning firearms is accurate. Mr. Pluid's evidence is that he did not engender nor solicit discussions with or about firearms with the undercover, and that instead the undercover agent did so. While Pluid freely admits to having displayed a firearm to the undercover, and to generally discussing firearms with the undercover, close scrutiny of the recorded conversations between the two men reveal that the undercover, over expressed reluctance on the part of Pluid, repeatedly pressed Pluid to bring, sell or connect the agent to, firearms.

If the discussions between the two men about firearms is not utilized or relied upon by either the Government or the court to enhance sentence or as a basis for denying mitigation of Mr. Pluid's sentence, then his objection in that regard is or will be withdrawn.

DATED this 29th day of September, 2006 at Wasilla, Alaska.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served by means of the ECF system on the 29th day of September, 2006 upon:

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